

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Claudia Paladino	Team: Team # 8	CCRB Case #: 200615469	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 11/19/2006 12:36 AM	Location of Incident: 169th Street and Franklin Avenue, Bronx	Precinct: 42	18 Mo. SOL 5/19/2008	EO SOL 5/19/2008	
Date/Time CV Reported Sun, 11/19/2006 4:19 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 11/19/2006 4:20 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Alfredo Alba	00145	933598	PBBX TF

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joseph Dolan	25139	934786	PBBX TF

Officer(s)	Allegation	Investigator Recommendation
A.POM Alfredo Alba	Abuse: PO Alfredo Alba questioned § 87(2)(b)	
B.POM Alfredo Alba	Abuse: PO Alfredo Alba issued a summons to § 87(2)(b)	
C.POM Alfredo Alba	Abuse: PO Alfredo Alba frisked § 87(2)(b)	
D.POM Alfredo Alba	Abuse: PO Alfredo Alba searched § 87(2)(b)	

Synopsis

On November 19, 2006, at approximately 12:35 AM, § 87(2)(b) was leaving a friend's apartment, at § 87(2)(b), in the Bronx. As he walked down the street, § 87(2)(b) glanced back and caught the eye of a police officer, who was in a marked police car. The officer, identified through investigation as PO Alfredo Alba, of the Bronx Task Force, called out the window to § 87(2)(b) and asked him where he was coming from (Allegation A). The police car did a U-turn across the street and pulled up beside § 87(2)(b). PO Alba asked § 87(2)(b) for identification with the intention of issuing him a summons (Allegation B). PO Alba and his partner, identified through investigation as PO Joseph Dolan, of the Bronx Task Force, exited their police car. PO Alba frisked (Allegation C) and allegedly searched (Allegation D) § 87(2)(b) finding only a container of Vaseline and a cigar in his pocket. Then the officers got back into the police car and drove away, still in possession of § 87(2)(b)'s identification. While the officers were gone, § 87(2)(b) went into § 87(2)(b) Hospital to find a pen. After waiting on the sidewalk for a few more minutes, § 87(2)(b) went to his apartment, located around the corner, at § 87(2)(b), to go to the bathroom and then returned to the incident location. When the officers returned, PO Alba handed § 87(2)(b) two disorderly conduct summonses (Allegation B). The first was for "blocking pedestrian traffic" and the second was for "failure to obey a lawful order."

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) rejected mediation. He thought that officers who behaved in the manner described were unreasonable and he did not want to speak with such people.

Inv. Berwald conducted the investigation; Manager Weisheit drafted the closing report.

Summary of Complaint

§ 87(2)(b) is a black male, who is 5' 9", weighs 240 pounds and is § 87(2)(b) old. § 87(2)(b)

§ 87(2)(b) made his complaint to the CCRB on November 19, 2006, using CCRB's online complaint system (enclosures 5A-5F). § 87(2)(b) provided a phone statement on November 22, 2006 (enclosure 5g). § 87(2)(b) was interviewed at the CCRB, on December 12, 2006 (enclosures 5h-5l).

On November 19, 2006, at approximately 12:35 AM, § 87(2)(b) left the apartment of a friend named § 87(2)(b) at § 87(2)(b). § 87(2)(b) intended to return to his apartment at § 87(2)(b), which was around the corner. § 87(2)(b) passed two Hispanic teens, whom he did not recognize, standing outside of 1239 Franklin Avenue. § 87(2)(b) did not say anything to these males. There were no other pedestrians in the area.

As § 87(2)(b) continued walking down Franklin Avenue, he became aware of the sound of slowing motors. He turned to look behind him and saw a marked police car, driving slightly behind him, following him from the other side of the street. As § 87(2)(b) turned his head, he caught the driver's eye. The driver was identified through the investigation as PO Alba. PO Alba was a Hispanic male, with dark hair, in his 20s or 30s. § 87(2)(b) stood approximately 50 feet from the entrance of § 87(2)(b) Hospital when the officers pulled over. PO Alba called out, "Where you coming from?" § 87(2)(b) told the officer that he was coming from a friend's house. In the e-mail he indicated that the officer asked him for a specific address but he could not provide one. In § 87(2)(b)'s in person and telephone interviews, he said that PO Alba also asked him if he had come from, "that building," meaning 1239 Franklin Avenue. Later

in § 87(2)(b)'s interview, he said that PO Alba also asked him for the address of the friend's building, which he did not know. When the officer asked him for identification, he produced his driver's license.

PO Alba and his partner, identified by the investigation as PO Dolan, stepped out of the patrol car. PO Dolan was a short white male. In the e-mail § 87(2)(b) indicated PO Alba searched his pockets. In the telephone interview § 87(2)(b) stated the officer first frisked him and again asked where he was coming from. § 87(2)(b) did not know the exact address. PO Alba then searched his pockets where he accidentally dipped his finger into an open container of Vaseline. This made the officer so angry that he jumped back into his vehicle with § 87(2)(b)'s license and drove away without saying anything. In his official CCRB interview, § 87(2)(b) provided more details and a different sequence of actions after the officers exited the vehicle. He alleged PO Alba first asked him if he had anything on him and § 87(2)(b) told him no. PO Alba then went into his pockets where he dipped his finger into the uncovered container of Vaseline and also found a cigar. He then accused § 87(2)(b) of possessing marijuana and said that he would find it if § 87(2)(b) did not give it to him. Sometime during the search, PO Alba asked § 87(2)(b) if he, the officer, had seen § 87(2)(b) coming from 1239 Franklin Ave. § 87(2)(b) told him he did not know the exact address from which he came. After conducting the search, PO Alba frisked him, "top to bottom." Then the officers got back into the RMP and drove away, still in possession of § 87(2)(b)'s identification and without giving § 87(2)(b) any instructions.

After the police car drove away, § 87(2)(b) went into § 87(2)(b) Hospital to find a pen, which he intended to use to write down PO Alba's information. § 87(2)(b) asked the security guard and then a receptionist for a pen. When § 87(2)(b) came outside about seven minutes later, he did not see the officers. In his official interview, he indicated he waited about 5 minutes on the street and then went to his house for about 10 minutes to use the bathroom. When he returned to the street, he waited another 5 minutes before the officers returned.

When the police car returned, it slowly rolled by § 87(2)(b) without coming to a full stop. PO Alba handed § 87(2)(b) two summonses for disorderly conduct, one for "blocking pedestrian traffic" and one for "failure to obey a lawful order." PO Alba did not provide any explanation for these summonses and quickly drove away, before § 87(2)(b) could ask him for his name. § 87(2)(b) called, "Yo," and the police car stopped on the corner of 169th Street and Franklin Avenue, at which point § 87(2)(b) requested the officer's name. PO Alba replied that his name was on the ticket.

§ 87(2)(b) accepted an adjournment in contemplation of dismissal for summons # 429513202-0. On April 24, 2007, § 87(2)(b) advised the investigator that he had accepted the adjournment because the judge and lawyer were rushing everyone through the system.

Witness Statements:

§ 87(2)(b) § 87(2)(b) gave a phone statement on February 28, 2007 (enclosure 6). She confirmed that § 87(2)(b) had been visiting her apartment on November 19, 2007 and left her apartment at approximately 12:00 AM or "a little after."

Police Officer Statements:

PO Alfredo Alba:

PO Alba prepared the following documents relating to the incident:

Summons # § 87(2)(b): According to the summons which was dated November 19, 2006, at 12:36 AM, § 87(2)(b) was in violation of penal law section 240.20, subsection 4. In the "Description of Offense" section, PO Alba wrote, "Failure to Obey a Lawful Order" (enclosure 8).

Summons # § 87(2)(b) This summons was issued at the same time as the previous summons. § 87(2)(b) was in violation of penal law section 240.20, subsection 5 . In the “Description of Offense” section, PO Alba wrote, “DisCon (Blocking Pedestrian Traffic)” (enclosure 8).

PO Alba did not have any memo book entries for this incident (enclosure 7a-7c).

PO Alba was first interviewed on January 22, 2007 (enclosure 9a-9b). PO Alba is a § 87(2)(b) . In this interview, PO Alba referenced the wrong tour. (The incident had happened on November 19, although PO Alba’s tour had begun on November 18; PO Alba referenced the tour that began on November 19 and ended on November 20).

On November 19, 2006, PO Alfredo Alba was assigned to a 5:30 PM by 2:00 AM tour. PO Alba’s assignment was to patrol the 42nd Precinct. PO Alba had recently been transferred from the 47th Precinct to the Bronx Task Force and was not familiar with the area around 1239 Franklin Avenue, in the Bronx. PO Alba did not have any memo book entries for this incident. PO Alba’s partner on the day of the incident was PO Dolan.

PO Alba did not have any recollection of the incident. He did not recognize § 87(2)(b)’s driver’s license photograph. When shown the summonses issued to § 87(2)(b) PO Alba confirmed that they had been written by himself, but still could not recall the incident. At the end of this interview, PO Alba was asked to explain the guidelines for issuing the summonses given to § 87(2)(b) PO Alba stated that he usually writes these summonses together, when one person, in a group of people, refuses to disperse. Then he writes two summonses for “blocking pedestrian traffic” and “refusing to obey a lawful order.” PO Alba stated that, “the only time he would write something like this” is when someone, “didn’t do something that was supposed to be done, like everyone left except for this guy.”

PO Alba was re-interviewed on May 18, 2007 (enc. 9c-9d). At this time, PO Alba recalled the incident. He stated, off the record, that he went back to the location in order to try and recall the incident. He stated that he was assigned to the 41st Precinct. He was dressed in uniform, assigned to a motor vehicle # 2526, and working with PO Dolan. His assignment was looking out for quality of life issues, in particular drug-related crimes.

PO Alba and PO Dolan passed by a group of, “no more than five men,” in front of 1239 Franklin Avenue. This area is very dark, so it was difficult to see what the men were doing. PO Alba noticed that there was an older man standing with younger men, which, in combination with the time of day and neighborhood, led him to suspect a drug transaction. The group was comprised of all black males in their 20s and § 87(2)(b) who PO Alba thought may have been in his 40s. If the men had been all the same age, the group would not have drawn PO Alba’s suspicion. The officers decided to stop the third time they passed this group, in order to check out the situation. When the officers parked the car the, all the men, except for § 87(2)(b) immediately dispersed down the hill. The men “gave compliance” by leaving, although the officers did not ask them to disperse. On the other hand, § 87(2)(b) did not walk away as quickly and went in the opposite direction towards § 87(2)(b) Hospital. Because of this behavior and because he was alone, PO Alba decided to stop him.

When PO Alba asked § 87(2)(b) where he was going, § 87(2)(b) would not answer PO Alba’s questions directly. PO Alba asked § 87(2)(b) what he was doing and § 87(2)(b) replied to his question with a question, “Why are you stopping me?” At this point, PO Alba decided to issue § 87(2)(b) a summons because he did not provide a reasonable explanation for his presence on the street. If § 87(2)(b) had provided a reason, PO Alba would not have issued a summons.

PO Alba then asked § 87(2)(b) for identification, which he provided. PO Alba proceeded to frisk § 87(2)(b) PO Alba said that he frisked § 87(2)(b) for safety reasons, as a routine check. Nothing led him to believe that § 87(2)(b) had a weapon. He did not go into § 87(2)(b)’s pockets and did not find anything on § 87(2)(b) PO Alba did not remember finding a cigar on § 87(2)(b) PO Alba said that he did not ask § 87(2)(b) if he was in possession of marijuana. He did not remember coming across a container of Vaseline.

Then PO Alba and PO Dolan got back into the car to write § 87(2)(b) a summons. PO Alba told § 87(2)(b) to stand by. The car was pointing away from the hill, on the same side of the street as § 87(2)(b). As PO Alba was running a warrant check on § 87(2)(b) disappeared. No more than 5 or 10 minutes had passed. Neither officer saw where § 87(2)(b) went. PO Alba drove up to the hospital and looked in the lobby. § 87(2)(b) was not there. Then the officers looked at both corners. They did a U-turn and went back down the hill and then went to the other corner, did another U-turn and stopped on the corner of Franklin Avenue and 169th Street. The officer proceeded to write § 87(2)(b) the second summons. § 87(2)(b) re-approached the car coming from the direction of § 87(2)(b) Hospital. PO Alba did not see from where § 87(2)(b) came. PO Alba asked § 87(2)(b) where he went. § 87(2)(b) said that he went to the hospital. PO Alba asked § 87(2)(b) why he left, because he told him not to leave. Then PO Alba told § 87(2)(b) that he would see him in court.

PO Alba looked at the summons at the conclusion of the interview and determined that the “disobeying lawful order” statute did not correctly fit § 87(2)(b)’s behavior. PO Alba did not know what statute would have been correct. Throughout the incident, there was no one else on the street, aside from those already mentioned and there was no car traffic. PO Alba issued § 87(2)(b) the summons for ‘blocking pedestrian traffic’ because he did not disperse as did the other people in the group.

PO Dolan:

PO Dolan provided an official statement to the CCRB on February 2, 2007 (enclosure 11a-11b). PO Dolan read the wrong memo book entry into the record (from November 19, 2006), but as he recalled the incident this is irrelevant to his statement. PO Dolan is a § 87(2)(b)

PO Dolan did not have any memo book entries regarding this incident (enclosure 0a-10c). On November 18, 2006, PO Dolan was working a tour from 5:30 PM to 2:05AM, assigned to the 42nd Precinct on patrol. His partner at this time was PO Alfredo Alba. PO Dolan’s memo book recorded PO Alba as the operator and himself as the recorder.

PO Dolan stated that he had not previously patrolled the 42nd Precinct at the time of this incident. At the time this incident occurred, PO Dolan had just started working for the Bronx Task Force and had previously been an officer in the 52nd Precinct. PO Dolan recalled that this incident occurred on Franklin Avenue, near the entrance of § 87(2)(b) Hospital. PO Dolan did not remember § 87(2)(b)’s being engaged in any suspicious activity. Neither PO Dolan nor his partner ever got out of the police car and the car did not move from where it was parked. PO Dolan agreed that this meant the officers could not have frisked § 87(2)(b)

PO Dolan did not recall anything about the incident until PO Alba wrote § 87(2)(b) the first summons. PO Dolan stated that while PO Alba was writing the initial summons and PO Dolan was conducting a computer check, § 87(2)(b) walked away from the police car although he had been instructed to stay on the sidewalk. Once PO Dolan and PO Alba realized that § 87(2)(b) had walked away, § 87(2)(b) was already out of sight. PO Alba then wrote another summons for “failure to comply with a lawful order.” § 87(2)(b) returned to the police car a few minutes later. PO Dolan initially said that PO Alba asked § 87(2)(b) where he had gone, but when the CCRB investigator asked him again he said that he did not recall whether or not PO Alba asked this question. The officers never learned where he had gone.

Police Department Documents:

A MISD Computer Check shows that PO Alfredo Alba did a computer check for § 87(2)(b) on 11/19/06, at 12:36AM. All searches came up negative for warrants (enclosures 12a-12d).

Civil Suits:

There is no record of a Notice of Claim being filed (enclosure 17A).

§ 87(2)(b), § 87(2)(a) 160.50

Officer's CCRB History:

PO Alba does not have any CCRB allegations substantiated against him, in his 3 years tenured as an officer of the NYPD (enclosure 2).

§ 87(2)(b)

Conclusions and Recommendations

Officer Identification:

The tax registry number on the summonses issued to § 87(2)(b) identified PO Alfredo Alba. PO Joseph Dolan was identified through roll call as PO Alba's partner. Both police officers acknowledged their encounter with § 87(2)(b)

Allegations A-D are pleaded against PO Alba based on the testimony of both § 87(2)(b) and PO Alba.

Undisputed Facts:

§ 87(2)(b) was walking down Franklin Avenue when a patrol car pulled up. PO Alba asked § 87(2)(b) questions about where he was going. § 87(2)(b) failed to answer the questions although he provided his identification to PO Alba when the officer asked for it. PO Alba frisked § 87(2)(b). While PO Alba had possession of § 87(2)(b)'s identification, § 87(2)(b) and the officers became separated for several minutes. PO Alba issued § 87(2)(b) two summonses.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation A: PO Alfredo Alba questioned § 87(2)(b)

In *People v. DeBour*, the Court of Appeals described a four-tiered delineation of police encounters and the degree of knowledge needed to justify each level. (Kamins 2.01). In the most insignificant intrusion, Debour established that “an officer can approach an individual to request information” when there is some “objective credible reason for that interference not necessarily indicative of criminality.” In New York Search and Seizure, Kamins indicates such a request involves basic, non-threatening questions regarding the identity and destination of an individual and his or her reason for being in a particular location. Both

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation B: PO Alba issued a summons to § 87(2)(b)

Kamins goes on to note that although the police have “the right to request citizens to answer questions, citizens have the right to refuse to answer them. The refusal to answer cannot, in itself, permit further action by the police, although the police may continue to observe the citizen unobtrusively, as long as they do not interfere with his liberty in any manner,” (Kamins 2.02 [1]). If the civilian responds with answers that are “false, inconsistent or evasive”, the encounter may be elevated to a Level 11 common law right of inquiry. However, in a Level 2 encounter, the citizen can also refuse to respond or can object to questions. If there is no indication that the civilian is engaged in any illegal activity, the officer cannot continue the questioning or take any further action.

§ 87(2)(b), § 87(2)(g)

Allegation C: PO Alba frisked § 87(2)(b)

Courts have ruled that a frisk or search conducted incident to the issuance of a summons is not misconduct. In *People v. Hazlewood*, 104 Misc.2d 1121 (Queens ct. 1980), the court ruled that there is compelling public policy reason for permitting a search, even if police intend to issue a summons. § 87(2)(b), § 87(2)(g)

Allegation D: PO Alba searched § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: